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No. 84-152

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HENRY BREWER, *et al.*,
Appellants,

v.

CITY OF WINSTON-SALEM, N.C., *et al.*,
Appellees.

On Appeal from the North Carolina Court of Appeals

APPELLANTS' REPLY BRIEF

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303 N.C. 220, 278 S.E.2d 224 (1981) . . . . . .

Moody v. Town of Carrboro,
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ARGUMENT

Appellants hereby oppose appellees' Motion to Dismiss or Affirm appellants' appeal from the North Carolina Court of Appeals' decision in Forsyth Citizens Opposing Annexations, et al. v. City of

Winston-Salem, et al., 67 N.C. App. 165, 312 S.E.2d 517, pet. denied, ___ N.C. ___, 315 S.E.2d 701 (1984).

1. Appellees' motion highlights the significance of the constitutional issues before this Court. They declare (at 11-12) that controlling decisions of this Court -- most particularly Hunter v. City of Pittsburgh, 207 U.S. 161 (1907) -- hold that "the Fourteenth Amendment's Due Process Clause does not apply to annexations by municipal corporations" and that "a state's authority to modify the boundaries of its political subdivisions is 'unrestrained' by the Fourteenth Amendment's Due Process Clause." Surely this untenable notion, which unfortunately pervades various state and lower federal court decisions,1/ should be refuted by this

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1/ See, e.g., In re Annexation Ordinance, 303 N.C. 220, 278 S.E.2d 224, 228 (1981).

Court. Appellees' claim demonstrates that this case involves substantial constitutional issues that this Court should resolve.

2. Appellees contend (at 7, 20) that "[c]ontrary to Appellants' allegations, the scope of judicial review of annexations in North Carolina is not limited" and that "[i]t is very clear from the decisions of the North Carolina Supreme Court and Court of Appeals that annexations are subject to judicial review for alleged constitutional infirmities, including the general complaints of unreasonableness raised by Appellants." It is difficult to fathom how appellees can make this assertion, which is diametrically contrary to the contentions in their motion in limine (Jurisdictional Statement, App. G) -- a

fact they conveniently fail to deal with here. In that motion, appellees asserted, as appellants do here, that judicial review is strictly "limited" to the three issues set forth in the North Carolina annexation statutes. See App. G at 8g. Appellees were successful in this argument before both the superior court and the North Carolina Court of Appeals, which held that the statute "limits the scope of judicial review to the determination of whether the annexation proceedings substantially comply with the requirements of the statutes" and that "[a] separate test of the reasonableness of an annexation is not included within the limited scope of judicial review." Jurisdictional Statement, App. B at 5b. The court of appeals relied for this proposition on

In re Annexation Ordinance, 303 N.C. 220, 278 S.E.2d 224 (1981), which is the definitive and binding North Carolina Supreme Court decision interpreting the State's annexation statute. Appellees' disturbingly contradictory advocacy serves to emphasize the unconstitutional strictures on review imposed by the North Carolina statute.

3. Appellees' claim (at 6) that the North Carolina annexation statutes "give substantial protection against arbitrary, capricious, and unreasonble acts by a municipality" is belied by the result in this case. Here appellants raised serious, factually-based claims that the challenged annexation was arbitrary and unreasonable, but these claims were not considered on their merits by the superior court or the court of

appeals. Nor, under the statute, could North Carolina courts consider, for example, whether an annexation was motivated by a bribe or Plan to dilute the black vote.2/

4. Appellees are incorrect in asserting (at 4) that all appellants here were involved in Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.), cert. denied, 104 S. Ct. 536 (1983). Two appellants in this case did not participate in the Baldwin case. But the fears expressed in the petition for certiorari in Baldwin -- that the substantial constitutional issues there

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2/ While North Carolina courts have examined the constitutionality of the North Carolina annexation statute itself -- see, e.g., Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980) -- these courts will not examine whether conduct effecting an annexation is arbitrary and thus unconstitutional.

raised would not be reviewed by North Carolina courts -- now have become manifest since these issues were in fact not reviewed.

CONCLUSION

For the reasons stated here and in appellants' Jurisdictional Statement, this Court should accept jurisdiction and consider this appeal in plenary fashion.

Respectfully submitted,

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